

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Cody	Team: Team # 3	CCRB Case #: 200907531	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/08/2009 1:00 AM	Location of Incident: Vicinity Of § 87(2)(b) & § 87(2)(b)	Precinct: 34	18 Mo. SOL 11/8/2010	EO SOL 11/8/2010	
Date/Time CV Reported Wed, 05/13/2009 5:54 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/15/2009 12:14 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			034 PCT
2. POM Fabio Nunez	01432	925839	034 PCT
3. SGT Daniel Schwarz	03747	916662	034 PCT
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christop Labate	12289	935145	034 PCT
2. POF Linda Ranallo	06296	916495	034 PCT
3. POM Cristian Duran	27567	938412	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Daniel Schwarz	Abuse: SGT Daniel Schwarz authorized the stop of the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.SGT Daniel Schwarz	Abuse: SGT Daniel Schwarz authorized the frisk of § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.SGT Daniel Schwarz	Abuse: SGT Daniel Schwarz searched § 87(2)(b)	§ 87(2)(b)
D.SGT Daniel Schwarz	Abuse: SGT Daniel Schwarz supervised the use of obscenity by a subordinate officer.	§ 87(2)(b)
E. Officers	Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
F.POM Fabio Nunez	Force: PO Fabio Nunez used a chokehold against § 87(2)(b)	§ 87(2)(b)
G. An officer	Force: An officer used a chokehold against § 87(2)(b)	§ 87(2)(b)
H.SGT Daniel Schwarz	Abuse: SGT Daniel Schwarz authorized the search of the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
I.POM Fabio Nunez	Abuse: PO Fabio Nunez threatened to arrest § 87(2)(b)	§ 87(2)(b)

## Case Summary

On May 8, 2009, § 87(2)(b) called IAB with the following complaint. The complaint was received at the CCRB on May 15, 2009, under log number 09-23161. On May 8, 2009, at about 1:00 a.m., in the vicinity of § 87(2)(b) and § 87(2)(b) in Manhattan, SGT Daniel Schwarz, PO Fabio Nunez, and PO Christopher Labate, of the 34<sup>th</sup> Precinct, stopped the car in which § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants. The following allegations resulted from the officers' actions:

**Allegation A – Abuse of Authority: SGT Daniel Schwarz authorized the stop of the car in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

**Allegation B – Abuse of Authority: SGT Daniel Schwarz authorized the frisk of § 87(2)(b)**

§ 87(2)(b) § 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

**Allegation C – Abuse of Authority: SGT Daniel Schwarz searched § 87(2)(b)**

§ 87(2)(g)

**Allegation D – Abuse of Authority: SGT Daniel Schwarz supervised the use of obscenity by a subordinate officer.**

§ 87(2)(g)

**Allegation E – Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)**

§ 87(2)(g)

**Allegation F – Force: PO Fabio Nunez used a chokehold against § 87(2)(b)**

**Allegation G – Force: An officer used a chokehold against § 87(2)(b)**

§ 87(2)(g)

**Allegation H – Abuse of Authority: SGT Daniel Schwarz authorized the search of the car in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

**Allegation I – Abuse of Authority: PO Fabio Nunez threatened to arrest § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(g)

## Results of Investigation

### Civilian Statements

#### 911 Recording

At 1:34 a.m. on May 8, 2009, § 87(2)(b) called 911. The officer's voice heard during the call is the same throughout the call and will be labeled "Officer A." The following is a transcription of the 911 call recording.

911 Operator: 911 Operator 1156. Where is the emergency? What borough are you in?

Officer A: [audible in the background] Fuck! [inaudible] Fuck!

§ 87(2)(b) [spoken under his breath, to 911 operator] I'm on Post and Academy and these cops are acting wild, like wild, like they fucking 'em up really rough.

911 Operator: You're on Post, Post what? § 87(2)(b)

Officer A: Fuck [inaudible.] Out of the car. Out of the car. Who you callin'?

911 Operator: Hello?

§ 87(2)(b) I'm calling the cops.

Officer A: Let's go! You callin' the cops? We are the cops!

§ 87(2)(b) I'm just asking them to [inaudible.] I'm just trying to—I'm just trying to find out—

Officer A: Get out of the fucking car. Shut the fuck up.

911 Operator: Hello? Hello? Caller?

Officer A: [aggressively] Eh?

§ 87(2)(b) Don't do that! Ahhh!

Officer A: You got a fuckin' gun?

§ 87(2)(b) Jeez!

Officer A: [shouting] You're assholes, right? You're all fucking assholes, right? Shut the fuck up! Shut the fuck up! Let's go. What? Who you callin'? Shut the fuck up! Shut the fuck up!

§ 87(2)(b) [inaudible.]

Officer A: Really? Really? You sure?

Officer A: [inaudible] fucking [inaudible]

Officer A: Let's go. Behind your back.

911 Operator: Caller? Hello? Hello?

Officer A: Did you fucking hit me?

§ 87(2)(b) [pleading] No!

Officer A: That's my job, motherfucker.

911 Operator: Hello?

Officer A: Turn around.

[call disengages]

The duration of the 911 call is one minute and 59 seconds. The IAB callout report states that the 911 operator called § 87(2)(b) back who stated that officers "threw them on the ground for no reason. IAB also called § 87(2)(b) back after the call disengaged but the call went directly to voicemail. The investigating officer left § 87(2)(b) a message.

The IAB callout report indicates that at 2:45 a.m. on May 8, 2009, § 87(2)(b) called IAB back. At that time, § 87(2)(b) provided the following narrative of the incident: § 87(2)(b) stated that he and his friends were sitting in his vehicle and had just dropped off a friend, when they were approached by four officers in plainclothes. § 87(2)(b) stated that his friend, identified as § 87(2)(b) was arrested for § 87(2)(b) after drugs were found on him. § 87(2)(b) mentioned that he showed one of the officers, identified as PO Labate, a PBA card belonging to § 87(2)(b) and PO Labate threw the card back at him. § 87(2)(b) mentioned that the officers kept pushing him and his friends and shoved him against his vehicle. § 87(2)(b) stated that

while he was on his cell phone, calling the police, one of the officers, identified as PO Labate, snatched the phone from him, cutting § 87(2)(b) finger. § 87(2)(b) stated that he was not going to need stitches. § 87(2)(b) further stated that, during the incident, two uniformed officers, identified as PO Ranallo and PO Duran, observed what was happening. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Complainant/Victim:** § 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old black male who is 6'1" tall, weighs 195 pounds, and has black hair and brown eyes. § 87(2)(b)

**CCRB Testimony**

On May 27, 2009, § 87(2)(b) was interviewed at the CCRB (6A-C). On June 15, 2009, Investigator Klein called § 87(2)(b) in order to obtain additional information. A synthesis of his statements follows. On May 8, 2009, at 1:00 a.m., § 87(2)(b) was driving his 2003 turquoise Chevy Malibu, license plate § 87(2)(b) in the vicinity of § 87(2)(b) and § 87(2)(b) in Manhattan. The passengers in the car were § 87(2)(b) friends, identified by the investigation as § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) whose last name remains unknown. § 87(2)(b) was sitting in the front passenger's seat, § 87(2)(b) was sitting in the back seat on the passenger's side, § 87(2)(b) was sitting in the back seat on the driver's side, and § 87(2)(b) and § 87(2)(b) were sitting in the back seat in between § 87(2)(b) and § 87(2)(b).

They had just come from Manhattan College, where they had been playing basketball, and § 87(2)(b) was about to drop § 87(2)(b) off at his house. § 87(2)(b) did not know exactly where § 87(2)(b) lived, but § 87(2)(b) told § 87(2)(b) to stop the car at the intersection of § 87(2)(b) and § 87(2)(b) and § 87(2)(b) double parked the car on the right side of the road. § 87(2)(b) and § 87(2)(b) were having a conversation and § 87(2)(b) told § 87(2)(b) "Let me just walk you to your door." Both § 87(2)(b) and § 87(2)(b) exited the car, and § 87(2)(b) walked § 87(2)(b) to the door of his house. § 87(2)(b) went inside the house and § 87(2)(b) remained outside.

Although it was dark, the street was well-lit by streetlights. § 87(2)(b) car was still running and his hazard lights were on. An unmarked, navy blue car that may have been a Chevy Impala drove past § 87(2)(b) car, heading down the block in the same direction § 87(2)(b) had been heading. About two minutes later, the same car reappeared on the opposite side of the street, heading towards § 87(2)(b) car. The car made a u-turn at the end of the block, then flashed its lights and pulled up directly behind § 87(2)(b) car. Four plainclothes officers exited the car at the same time. PO1, the driver, identified by the investigation as PO Fabio Nunez of the 34<sup>th</sup> Precinct, was a 40-year-old, 5'9", 200 lb Hispanic male with a medium complexion and light brown hair, which he had slicked back with gel. PO2 exited from the front passenger's seat. He was a 40-year-old, 6'2", 220 lb white male with black hair and remains unidentified. PO3, who also remains unidentified, exited from the back seat. He was a 40-year-old, 6'3", 230 lb white male with blonde hair, a slight pot belly, and a large head. PO4, who remains unidentified, exited from the back seat as well. PO4 was a 40-year-old, 5'9", 190 lb white male with black hair. PO Nunez approached § 87(2)(b) PO2 approached § 87(2)(b) PO3 approached § 87(2)(b) and PO4 approached § 87(2)(b) § 87(2)(b).

PO Nunez asked § 87(2)(b) for his ID and § 87(2)(b) provided his ID and his PBA card. PO Nunez took a look at the cards and tossed § 87(2)(b) PBA card back at § 87(2)(b) striking his chest. PO Nunez asked, "What are you guys doing here?" § 87(2)(b) explained he had just been playing basketball, that one of his friends had left the car to drop another friend off, and that he was waiting for his friend to come back. PO Nunez said, "Oh, okay." Meanwhile, PO2, PO3, and PO4 were questioning § 87(2)(b) § 87(2)(b) and § 87(2)(b) respectively as to what they were doing in the area.

The officers told the young men to put their hands where the officers could see them. § 87(2)(b) and § 87(2)(b) complied, but § 87(2)(b) hands remained folded in his lap. PO3 started banging on the trunk of § 87(2)(b) car. PO3 walked around to the other side of the car and approached § 87(2)(b) PO3 shouted "Do you have a fucking problem? We could take this outside." § 87(2)(b) responded, "I

don't have a problem with you. I'm not doing nothing," and put his hands in the air. § 87(2)(b) asked PO Nunez to tell SGT Schwarz to calm down.

PO3 then opened the car door and pulled § 87(2)(b) out, throwing him onto a car parked next to § 87(2)(b) vehicle. § 87(2)(b) only said, "Okay, okay." § 87(2)(b) had his back to the car and § 87(2)(b) could not see exactly what was happening, but every few seconds, the car shook. § 87(2)(b) saw an officer, possibly PO2, frisking § 87(2)(b).

PO Nunez asked § 87(2)(b) where he lived. § 87(2)(b) replied that he lived up the block on "§ 87(2)(b) but PO Nunez responded that § 87(2)(b) was not up the block and he did not like that answer. PO Nunez told § 87(2)(b) to get out of the car. PO Nunez then pulled § 87(2)(b) out of the car and pushed him, causing § 87(2)(b) to land on his face. PO Nunez then picked § 87(2)(b) up and threw him against § 87(2)(b) car. § 87(2)(b) back was to the car as PO Nunez held his forearm over § 87(2)(b) neck for about 30 seconds. PO Nunez and § 87(2)(b) started to argue.

PO2 asked § 87(2)(b) to step out of the car and § 87(2)(b) complied, standing chest first against the car. PO2 frisked § 87(2)(b). § 87(2)(b), who was wearing basketball shorts, said, "Stop, you're hurting me. What are you doing in my ass? Get out of my ass." PO2 said, "Stop clenching." Meanwhile, PO Nunez was standing with § 87(2)(b) and § 87(2)(b) at the back of § 87(2)(b) car. PO4 was assisting PO2 with the frisk of § 87(2)(b) in some manner, but § 87(2)(b) did not see exactly what PO4 was doing. § 87(2)(b) was then handcuffed and one of the officers said § 87(2)(b) had marijuana on him.

Either just before or just after PO2 searched § 87(2)(b) PO3 asked § 87(2)(b) who was still sitting in the driver's seat, to open the trunk and hand over the car keys. § 87(2)(b) complied. § 87(2)(b) called 911 and PO Nunez asked who he was on the phone with. PO Nunez grabbed § 87(2)(b) cell phone and threw it into the back seat. Then PO Nunez opened the car door and pulled § 87(2)(b) out of the car, throwing him to the ground. He then picked him up and threw him against the car. PO Nunez placed his elbow against § 87(2)(b) throat for 15 seconds. § 87(2)(b) who has asthma, felt his breathing to be restricted. PO Nunez asked, "Do you have a problem? Who are you calling?" § 87(2)(b) stated that he had been calling the police because what the officers were doing didn't seem right. PO Nunez shouted, "We are the cops." PO Nunez then grabbed § 87(2)(b) shirt and repeatedly pushed him against the car.

PO3 asked what § 87(2)(b) doing and § 87(2)(b) replied that he was calling the police. PO3 said, "We are the police. Do you have a problem with me? Do you want to fight me right now? I'll fight you. I don't care." PO3 leaned against § 87(2)(b). § 87(2)(b) stated, "I don't have any intentions of fighting you." PO3 replied, "You're a smart ass." Then PO3 grabbed § 87(2)(b) by the shirt and pressed his forearm into § 87(2)(b) chest, pressing § 87(2)(b) against the car. During this time, PO3's forearm slipped, hit § 87(2)(b) in the neck, and remained there for 10-15 seconds. § 87(2)(b) hands were folded at his waist and PO3's belt buckle was pressing into § 87(2)(b) hands. PO3 stated, "This is Manhattan. This is not the Bronx. The Bronx is pussy. We're serious. We're real. This is not what you see on TV."

Everyone was standing by the trunk of § 87(2)(b) car—except for § 87(2)(b) who was handcuffed and sitting on the ground. One of the white officers, § 87(2)(b) was not sure who, searched § 87(2)(b) car, feeling the ceiling, looking under the seats, and examining the contents of the glove compartment and the trunk. No contraband was found inside the car. By this time, a crowd of 20 to 30 people had gathered across the street. § 87(2)(b) was among them. The officers told the crowd to disperse, but did not otherwise interact with the crowd.

Two uniformed officers, a male and a female, identified by the investigation as PO Cristian Duran and PO Linda Ranallo of the 34<sup>th</sup> Precinct, arrived in a marked police van at some point during the incident, exited their vehicle, and stood about five feet away from the incident, watching what was going on. They did not interact with anyone at the scene. PO Ranallo was a 5'6" white female in her late 20's with an average build and black hair in a ponytail. PO Duran was a 5'8" white male in his late 20's with an average build and dark hair.

The officers told § 87(2)(b) § 87(2)(b) and § 87(2)(b) that they could leave and then took § 87(2)(b) to the patrol car. § 87(2)(b) asked, "Can I get somebody's name or badge here?" PO

Nunez responded, "My name is officer. Get back in the car and leave. If you guys stay here, we'll come up with something to arrest you." § 87(2)(b) § 87(2)(b) and § 87(2)(b) entered their car and § 87(2)(b) § 87(2)(b) drove away.

§ 87(2)(b) § 87(2)(b) parked in front of a Chase Bank around the corner. He called § 87(2)(b) and § 87(2)(b) stated that he had witnessed the incident from across the street. IAB called § 87(2)(b) and he had missed the call, so he called back. The 911 operator stated that she would send over a sergeant who was on patrol. The sergeant, a fat, 5'10", uniformed Hispanic male in his 40's with black hair, arrived and told § 87(2)(b) § 87(2)(b) that the officers who stopped his car were part of the 34<sup>th</sup> Precinct crime unit. PO Ranallo talked to the sergeant and then drove off.

§ 87(2)(b) § 87(2)(b) stated that neither he nor his friends had been drinking alcohol or using drugs before the incident. He also stated that he had not been aware that § 87(2)(b) § 87(2)(b) had marijuana on him. § 87(2)(b) § 87(2)(b) provided a photograph of his left hand, showing a large blood blister, and a photograph of his right hand, in which a laceration was visible. At the time of the interview, the blood blister was still apparent, but the cut seemed to have healed. § 87(2)(b) § 87(2)(b) believed that he received the blood blister from PO3's belt buckle pressing against him and the laceration from PO Nunez grabbing his cell phone. § 87(2)(b) § 87(2)(b) did not receive medical treatment for these injuries.

On May 7, 2010, § 87(2)(b) § 87(2)(b) viewed officer photographs at his residence, § 87(2)(b) § 87(2)(b) (Enc. 7A-M). He viewed three photo arrays, photo array one contained SGT Schwarz (photo 4) and five fillers. § 87(2)(b) § 87(2)(b) did not recognize any officers from that array. Photo array two contained PO Nunez (photo 3) and five fillers. At first, § 87(2)(b) § 87(2)(b) did not recognize any officers, but then picked PO Nunez out, but saying he was not entirely sure PO Nunez was involved in the incident. He then said PO Nunez was "mostly by the driver" and was one of the officers who pulled him out of his vehicle. Photo array three contained PO Labate (photo 2) and five fillers. § 87(2)(b) § 87(2)(b) picked out PO Labate, but also said he was not entirely sure if PO Labate was involved. At first, § 87(2)(b) § 87(2)(b) said he did not know what PO Labate's role in the incident was, just saying he was one of the officers that was there. He then went on to say that he was the officer that directed profanity at him while he was on the phone with 911. § 87(2)(b) § 87(2)(b) wrote that PO Labate "pulled my friend out of my car." He also wrote that PO Labate pushed his friend onto the trunk of his vehicle. § 87(2)(b) § 87(2)(b) did not write anything regarding PO Labate cursing at him, saying after the interview that he did not feel like writing down everything that happened.

**Victim:** § 87(2)(b) § 87(2)(b)

- § 87(2)(b) § 87(2)(b) is a black male born on § 87(2)(b) § 87(2)(b), 5'11", 225 pounds with black hair and brown eyes.

**CCRB Statement**

On May 10, 2010, § 87(2)(b) § 87(2)(b) was interviewed at the CCRB (Enc. 8A-F). He stated that on the incident date, he and his friend had just come from playing basketball at Manhattan College. They dropped a friend named § 87(2)(b) § 87(2)(b) off at his home and were waiting for him to come back outside. § 87(2)(b) § 87(2)(b) was driving and § 87(2)(b) § 87(2)(b) was in the passenger seat, with § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) (he did not know either of their last names) in the backseat. They were double parked outside and the car was running. They had been there for five minutes when § 87(2)(b) § 87(2)(b) observed an unmarked black Crown Victoria drive past them and then make a U-Turn. Initially § 87(2)(b) § 87(2)(b) said there were four officers present during the incident but eventually said he believed there were only three, but he was ultimately not sure whether it was three or four.

All the officers approached the vehicle at the same time. § 87(2)(b) § 87(2)(b) said that since the incident happened so long ago that he did not remember everything very clearly. The first thing the officers told § 87(2)(b) § 87(2)(b) was to turn off the car, which § 87(2)(b) § 87(2)(b) complied with. The officers then began removing everyone from the car one by one, with § 87(2)(b) § 87(2)(b) coming out last. § 87(2)(b) § 87(2)(b) said PO1, a white male, wearing a hat, 6'0", stocky build, was the one removing people from the vehicle and frisking them one at a time. § 87(2)(b) § 87(2)(b) said that at some point, he believed § 87(2)(b) § 87(2)(b) got on the phone with 911, prompting the officers to order him out of the car. He believed PO1 and PO2, a Hispanic male, black hair, unknown hairstyle, 5'11", stocky build, identified as PO Nunez, were both involved in getting § 87(2)(b) § 87(2)(b) out of the

car. PO1 was acting “rough” with everyone, and was frisking them very roughly. § 87(2)(b) and PO1 were speaking when PO1 grabbed § 87(2)(b) shirt collar and “yoked” § 87(2)(b) up against the car, essentially pulling his shirt collar up. § 87(2)(b) said he did not believe PO1 was actually wrapping his hands around § 87(2)(b) neck, but was only holding his shirt near his neck.

PO1 also frisked and searched § 87(2)(b) going into his pockets. § 87(2)(b) had some marijuana in the gym shorts he was wearing. § 87(2)(b) said the officers searched the vehicle at some point, but he was not sure if it was before or after the marijuana was recovered from his person. He recalled that he was still outside the car while it was being searched and that he was not in handcuffs. § 87(2)(b) said the officers were searching the glove compartment and all over the inside of the vehicle. § 87(2)(b) said that he was placed in the police vehicle and believed that there were three officers because he was not seated between two officers in the backseat, only one. He was not entirely sure though. He could not describe the third officer at all, except that he was a male. § 87(2)(b) indicated that all the officers were cursing but he could not remember what they said or who said what.

§ 87(2)(b) then was shown photo arrays one through three, with one containing PO Nunez, two containing SGT Schwarz and three containing PO Labate, but could not identify any of the officers. Each array had five filler photos.

### **Attempts to Contact Additional Civilians**

Between June 10, 2009, and July 14, 2009, the undersigned investigator called § 87(2)(b) five times, on each occasion leaving a message for him with his sister, and mailed § 87(2)(b) two please call letters.

On June 10, 2009, the undersigned investigator spoke with § 87(2)(b) over the phone and scheduled him for an interview for June 17, 2009. On June 17, 2009, the undersigned investigator spoke with § 87(2)(b) over the phone in order to confirm the appointment. § 87(2)(b) stated that he wished to reschedule the appointment for later in the week. On June 19, 2009, and June 22, 2009, the undersigned investigator called § 87(2)(b) and left messages regarding scheduling. On June 30, 2009, the undersigned investigator called § 87(2)(b) and left him a message. On June 30, 2009, § 87(2)(b) called the undersigned investigator and scheduled an appointment for July 7, 2009. On July 7, 2009, § 87(2)(b) missed his appointment without calling in advance to cancel or reschedule. On July 7, 2009, the undersigned investigator called § 87(2)(b) left a message regarding his missed appointment, and mailed him a missed appointment letter.

The address on the UF-250 for § 87(2)(b) was invalid. On June 10, 2009, the undersigned investigator conducted searches of White Pages, Verizon, and Cole’s Directories and found a new address for § 87(2)(b). On June 15, 2009, the undersigned investigator spoke with § 87(2)(b) over the phone and § 87(2)(b) stated that he believed § 87(2)(b) lived in the housing projects on § 87(2)(b) in the Bronx. On June 15, 2009, the undersigned investigator identified the location of a NYCHA building located at § 87(2)(b) and § 87(2)(b) in the Bronx. On June 18, 2009, the undersigned investigator received the results of a Lexis Nexis search, which indicated that § 87(2)(b) did not live at the above location. On July 20, 2009, the undersigned investigator found a street with a name similar to the street listed on § 87(2)(b) UF-250. On July 20, 2009, the undersigned investigator mailed a please call letter to this new address. On July 27, 2009, the letter was returned to the CCRB marked “no such address.” On July 27, 2009, the undersigned investigator conducted a DMV search for § 87(2)(b) with negative results. On February 8, 2010, the undersigned investigator confirmed a new address and two possible telephone numbers for § 87(2)(b) via a Lexis Nexis search. On February 8, 2010, the undersigned investigator called both of these telephone numbers. Both numbers were out of service. On February 8, 2010, and February 16, 2010, the undersigned investigator mailed two please call letters to the new address for § 87(2)(b).

On February 16, 2010, the undersigned investigator confirmed via a Department of Corrections Database search that § 87(2)(b), § 87(2)(b), and § 87(2)(b) are not incarcerated. No letter has been returned to the CCRB marked “return to sender” and, to date, none of the above individuals has made any attempt to contact the CCRB. Therefore, sworn statements were not obtained from § 87(2)(b), § 87(2)(b), and § 87(2)(b).

On June 23, 2009, in an attempt to make contact with additional civilian witnesses, the undersigned investigator visited the incident location and posted signs at § 87(2)(b). No civilians contacted the CCRB as a result of these contact attempts.

### **NYPD Statements**

#### **Subject Officer: PO FABIO NUNEZ**

- PO Nunez is a § 87(2)(b)-old Hispanic male, 5'11", 190 lbs with a medium complexion, black hair, and brown eyes.
- On the incident date, he was assigned to anti-crime and worked from 5:30 p.m. to 3:05 a.m. with PO Labate and SGT Schwarz in plainclothes and in an unmarked, blue Ford Crown Victoria.

#### **Memo Book:**

PO Nunez noted that at 1:50 a.m. on the incident date, he conducted a car stop at § 87(2)(b) and § 87(2)(b). PO Nunez noted that he completed four UF-250's and that PO Labate made one arrest (Enc. 13A-C).

#### **UF-250's**

PO Nunez prepared stop, question, and frisk reports for § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b). PO Nunez indicated that at 1:50 a.m. on the incident date, § 87(2)(b) and § 87(2)(b) were observed for two minutes and stopped for five minutes at the intersection of § 87(2)(b) and § 87(2)(b) in Manhattan. PO Nunez described the location of the incident as "vehicle/street."

PO Nunez reported that the above individuals were suspected of criminal possession of a weapon. PO Nunez described the circumstances leading to the stop of § 87(2)(b), § 87(2)(b) and § 87(2)(b) as "actions indicative of casing victim or location" and "furtive movements." PO Nunez listed the circumstances leading to the stop of § 87(2)(b) as "furtive movements" only. PO Nunez noted that additional factors leading to the stops of the above individuals were that the "area has high incidence of reported offense."

PO Nunez indicated that physical force was used on all of the above individuals. PO Nunez described the force that was used as "hands on suspect, suspect against wall." PO Nunez reported that all of the above individuals were frisked. PO Nunez described the basis for these frisks as "furtive movements." PO Nunez indicated the above individuals were not searched. PO Nunez left the boxes marked "demeanor of person stopped" and "remarks made by person stopped" empty. PO Nunez indicated that no weapons or contraband were found on any of the above individuals. The reports are enclosed (Enc. 14A-D)

#### **CCRB Testimony:**

On October 21, 2009, PO Nunez was interviewed at the CCRB (Enc. 15A-B). PO Nunez stated that he had no memo book entries regarding the incident and that he did not recall the incident. Upon viewing all four UF-250's that he had prepared for the incident, PO Nunez stated that the 250's "looked different" than the 250's he had written out by hand. Upon being informed that the same boxes he had checked off had been printed out using a computer, PO Nunez stated, "Hands on the suspect, talked to him, whatever we checked off there, that's what we did that night."

After hearing the recording of § 87(2)(b) call to 911, PO Nunez was asked whether the recording refreshed his recollection of the incident. PO Nunez responded, "Just, uh, recalling, nothing else." Upon viewing the command log entry for § 87(2)(b) arrest, PO Nunez stated that PO Labate was one of his co-workers. After listening to the 911 call recording a second time, PO Nunez was asked whether he recognized the voice of the person who stated, "You want the cops? We are the cops," PO Nunez stated, "Not really." When asked whether he recognized the voice of the person who stated, "You're assholes, right? You're all fucking assholes, right?" PO Nunez stated, "It could be one of the guys in the car too! I don't



know.” When asked whether he recognized the voice of anyone in the audio recording, PO Nunez stated, “Nah, it’s too disturbing. It sounds like a bunch of people fighting in there.” PO Nunez recalled only that his partner had made the arrest that night.

**Subject Officer: PO CHRISTOPHER LABATE**

- *PO Labate is a § 87(2)(b) -old, 6’0’’, 205 lb, white male with brown hair and brown eyes.*
- *On the incident date, he was assigned to anti-crime and worked from 3:35 p.m. to 2:05 a.m. in uniform and in an unmarked, blue Ford Crown Victoria with SGT Schwarz and PO Nunez.*

**Memo Book:**

PO Labate informed the CCRB that he had lost his memo book. He did not recall whether he had made any memo book entries regarding the incident. A request sent to IAB similarly indicated that PO Labate had lost his memo book.

**CCRB Testimony:**

On October 22, 2009, PO Labate was interviewed at the CCRB (Enc. 16A-C). At 1:00 a.m., he conducted a car stop with his partners, one of whom he identified as SGT Schwarz, and another whose identity PO Labate could not recall. As they were driving past a car, SGT Schwarz, PO Labate, and their partner, identified by the investigation as PO Nunez, observed what they believed to be a gun being passed into the vehicle. PO Labate did not know who first made this observation. He did not discuss the observation with SGT Schwarz before conducting the car stop because it happened in a split second. When asked how he knew that SGT Schwarz had also made this observation, PO Labate responded, “I can’t say exactly who said what and saw what.”

When asked to describe in detail the behavior that appeared indicative of passing a gun, PO Labate stated that there was “what looked to be a gun wrapped up or something, a weapon or something, wrapped up in a shirt.” When the officers were about five feet behind the vehicle, they saw a male, identified as § 87(2)(b) standing outside on the passenger’s side of the car, in the process of passing the shirt through the front passenger’s side window. The way § 87(2)(b) was putting the shirt down suggested that the shirt had “some kind of weight.” PO Labate thought this because § 87(2)(b) used two hands as opposed to one to place the shirt into the car. PO Labate’s suspicion was elevated because § 87(2)(b) looked around before approaching the car and placed the shirt into the car just as the officers arrived. The shirt was about a foot wide. At this time, there were two occupants of the vehicle—the driver, identified as § 87(2)(b) and a male in the backseat on the driver’s side, identified by the investigation as § 87(2)(b).

The officers passed the vehicle and turned their car around quickly. All of the officers, including PO Labate, who was the driver, got out of the patrol car. PO Labate approached the driver’s side and SGT Schwarz approached the passenger’s side. The officers asked § 87(2)(b) and § 87(2)(b) to come out of the car. § 87(2)(b) was still outside at this time. It took § 87(2)(b) and § 87(2)(b) a little while to comply because they weren’t listening. PO Labate opened the door, grabbed § 87(2)(b) by his arms, and pulled him out of the car. PO Labate did this because as he approached the car, § 87(2)(b) reached to the side as if he were going to grab something. Therefore, PO Labate told § 87(2)(b) to stop moving and put his hands up. PO Labate immediately pulled § 87(2)(b) out of the car, turned him around, placed him against the vehicle, and frisked him. PO Labate searched § 87(2)(b) pockets and found nothing inside. PO Labate did this because he believed that there was a weapon inside the car and did not want to give § 87(2)(b) a chance to respond. PO Labate did not recall whether he removed anything from § 87(2)(b) pockets. PO Labate did not remember what SGT Schwarz was doing at this time or whether he was speaking to anyone.

§ 87(2)(b) was now the only person remaining in the vehicle. § 87(2)(b) was on the phone. PO Labate stated that he did not know with whom § 87(2)(b) was speaking. PO Labate did not recall at what point he noticed that § 87(2)(b) was on the phone. An officer, PO Labate was not sure who, asked § 87(2)(b) to get off the phone but he wouldn’t get off the phone. Either SGT Schwarz or another officer took actions to get § 87(2)(b) off the phone but PO Labate did not recall specifically what was done. PO

Labate did not take any actions against § 87(2)(b). PO Labate did not recall how § 87(2)(b) was removed from the vehicle and did not know whether § 87(2)(b) stepped out of the vehicle or was forcibly removed. In his initial narrative of the incident, however, PO Labate stated, “We pulled *them* out of the car.”

PO Labate searched § 87(2)(b) and another officer searched § 87(2)(b). Marijuana was found on § 87(2)(b). PO Labate was § 87(2)(b) arresting officer. PO Labate did not recover the marijuana and did not know where it was found. PO Labate stated that the vehicle was searched. PO Labate did not search the vehicle and did not recall who did. PO Labate did not recall where in the car the search was conducted. PO Labate did not know whether the marijuana was found before or after the car was searched. § 87(2)(b) and § 87(2)(b) were released.

When asked whether there was anything inside the shirt that had initially raised his suspicions, PO Labate stated that he did not remember. PO Labate stated that he never actually saw the shirt inside the vehicle. Then PO Labate volunteered, that after § 87(2)(b) had been arrested and taken to the precinct, § 87(2)(b) had asked for his shirt back and “we gave it to him.” PO Labate stated that the shirt was located in the front seat of the car. PO Labate did not recall who retrieved the shirt from the vehicle. When asked whether there were any weapons recovered from the shirt, PO Labate stated that none had been found inside the shirt.

§ 87(2)(b) never stated that he had injuries and there were no visible injuries on his person. When shown photographs of § 87(2)(b) injuries, PO Labate stated that he was not aware of any actions that might have caused those injuries. When shown photographs of the scratch on § 87(2)(b) car, PO Labate stated that he was not aware of any actions that might have caused the scratch. PO Labate did not recall whether § 87(2)(b) ever asked for an officer’s name or badge number. PO Labate stated that the officers never used any profanity. No officer used a chokehold against the occupants of the car. Upon viewing the UF-250’s, PO Labate stated that there were no actions that led up to the stop besides the appearance of what the officers suspected to be a gun and the fact that this is a “drug prone location” and a “high crime area.” PO Labate also stated that § 87(2)(b), § 87(2)(b) and § 87(2)(b) were placed against the side of the vehicle.

PO Labate did not recall whether he or another officer requested § 87(2)(b) ID. However, PO Labate was sure that an officer had done this. PO Labate also stated that he was sure an officer had asked § 87(2)(b) what he was doing at the location; however, PO Labate did not recall whether it was he or another officer who had done this. PO Labate did not remember how § 87(2)(b) responded. PO Labate did not recall whether § 87(2)(b) provided a PBA card. The officers called for backup over the radio and other officers, identified by the investigation as PO Duran and PO Ranallo, arrived later. PO Labate did not recall when PO Duran and PO Ranallo arrived.

Upon hearing the recording of § 87(2)(b) call to 911, PO Labate stated that the recording did not refresh his recollection of the incident. When asked whether he could explain what was happening as the dialogue was taking place, PO Labate stated, “I’m not going to say who was saying what. I don’t know. But as far as what I said earlier, same thing, we’re asking them to get out of the car, no one was compliant in getting out of the car, we believed there to be a weapon at the car. There was a little more urgency to get someone out of the car at that point.” PO Labate stated that he could not identify any of the voices that were audible on the recording.

**Subject Officer: SGT DANIEL SCHWARZ**

- *SGT Schwarz is a § 87(2)(b)-old, 5’10”, 245 lb Hispanic male with light skin, brown hair, and brown eyes.*
- *On the incident date, his assignment was anti-crime supervisor. He worked from 5:26 p.m. to 2:10 a.m. in plainclothes and in an unmarked, blue Ford Crown Victoria with PO Nunez and PO Labate.*

**Memo Book**

SGT Schwarz was unable to bring his memo book to the CCRB because it was in the possession of IAB. He was unsure whether or not his memo book contained any entries regarding the incident. A request

that the 34<sup>th</sup> Precinct provide a copy of SGT Schwarz's memo book was similarly met with a negative response, as IAB had confiscated SGT Schwarz's memo book.

### **CCRB Testimony**

On October 23, 2009, SGT Schwarz was interviewed at the CCRB (Enc. 17A-B). On May 8, 2009, at about 1:00 a.m., he was driving Northbound on § 87(2)(b) when he observed a vehicle double parked about 20 feet away on the Southwest corner of § 87(2)(b) and § 87(2)(b). It was night but the street was well-lit by streetlights and SGT Schwarz had a clear view of the action transpiring around the car. Two males, identified as § 87(2)(b) and § 87(2)(b) were seated in the front seat and two other males, identified as § 87(2)(b) and § 87(2)(b) approached them. One of the males outside the vehicle was carrying a shirt or a pair of pants. SGT Schwarz was not sure exactly what the article of clothing was. The clothing was rolled up or wrapped up and the individual was holding it with one hand on top and one hand on the bottom, as if it were a football. The article of clothing was bulky and appeared to be heavy. It was about eight inches by twelve inches. SGT Schwarz suspected that the clothing was concealing a gun, a kilo of cocaine, or a weapon of some kind, since it had "that same size and shape."

The male looked up and down the block and then dropped the clothing into § 87(2)(b) lap. Either that male or the other male standing outside the car walked away. The remaining individual entered the car. Later, SGT Schwarz stated that he was not sure about this and that both males may have entered the car. When asked whether the male who had passed the item of clothing into the car entered the vehicle, SGT Schwarz replied, "That seemed very odd. He passed it and then got into the car. I didn't quite understand why he didn't take it in himself."

The police vehicle made a U-Turn and flashed its lights. In order to investigate what the males were doing there, all three officers approached § 87(2)(b) car, with PO Labate standing on the driver's side and SGT Schwarz standing on the passenger's side. SGT Schwarz did not remember where PO Nunez was standing. As soon as the officers approached the car, the occupants immediately became belligerent, screaming profanities such as "What the fuck are you stopping us for. We can't even drive around?" The officers never had a chance to ask the occupants of the car any questions. The male in the back seat on the driver's side, identified as § 87(2)(b) reached across the back seat of the car, down to the floor in between § 87(2)(b) legs. PO Labate opened the door and pulled § 87(2)(b) out of the car by the arm or by the belt. PO Labate did this because all the officers believed there to be a gun on the floor. PO Labate placed § 87(2)(b) hands against the roof of the car and frisked him. § 87(2)(b) was not placed against the car with any force. PO Labate did not search § 87(2)(b) pockets.

When asked a second time to explain the circumstances surrounding PO Labate's decision to remove § 87(2)(b) from the vehicle, SGT Schwarz stated that at that time, PO Labate had been asking § 87(2)(b) for license and registration and questioning him as to what he was doing there—trying to "speak over him" and "calm the situation down." § 87(2)(b) did not provide identification at that time.

All of the officers ordered the occupants of the car to "Put your hands where we can see them. Don't move." Everyone continued to move and no one complied. PO Labate had to redirect his attention to § 87(2)(b) who was reaching to the right for something. PO Labate told § 87(2)(b) to stop moving but § 87(2)(b) kept on reaching. Later, after he had been removed from the vehicle, § 87(2)(b) told the officers that he had been reaching for his phone. SGT Schwarz did not know who removed § 87(2)(b) from the car. § 87(2)(b) and § 87(2)(b) were asked to step out of the car and they complied.

The officers frisked all of the occupants of the vehicle for weapons. SGT Schwarz frisked § 87(2)(b). When SGT Schwarz was patting down § 87(2)(b) buttocks, SGT Schwarz felt what he believed to be the handle of a weapon. As he touched it, a glass jar of marijuana fell to the ground and shattered. The jar had been located inside § 87(2)(b) underwear. § 87(2)(b) was arrested for criminal possession of marijuana. UF-250's were prepared for § 87(2)(b), § 87(2)(b) and § 87(2)(b).

SGT Schwarz did not recall the officers taking any of the other alleged actions against the occupants of the vehicle. The tone of the incident was particularly heated because it was four against three. However, no officer used any profanity. SGT Schwarz was unable to recognize any of the voices on the 911 recording and stated that the voice of the officer cursing was not his own. He did not know what happened to the article

of clothing that the officers had originally seen and did not recall whether any officer ever checked what was wrapped up inside of it. No officer searched § 87(2)(b) car.

**Witness Officer: PO CRISTIAN DURAN**

- PO Duran is a § 87(2)(b) -old, 5'8'', 210 lb, Hispanic male with black hair and brown eyes.
- On the incident date, he was assigned to Sector C and worked from 12:00 a.m. to 8:00 a.m. with PO Ranallo in uniform and in a marked patrol car.

**Memo Book:**

PO Duran had no entries in his memo book regarding the incident. At 1:25 a.m., he had a memo book entry indicating that a car alarm was going off at West 207<sup>th</sup> Street (Enc. 9A-C).

**CCRB Testimony:**

On October 5, 2009, PO Duran was interviewed at the CCRB (Enc. 10A-B). PO Duran did not recall the incident. PO Duran described the location of the car alarm incident as § 87(2)(b) blocks away from § 87(2)(b) and § 87(2)(b).

**Witness Officer: PO LINDA RANALLO**

- PO Ranallo is a § 87(2)(b) -old, 5'6'', 148 lb white female with brown hair and brown eyes.
- On the incident date, she was assigned to sector C patrol and worked from 11:15 p.m. to 7:50 a.m. with PO Duran in uniform and in a marked patrol car.

**Memo Book:**

She had no memo book entries regarding the incident, nor did her memo book contain any entries stating where she was at the time of the incident (Enc. 11A-B).

**CCRB Testimony:**

On October 19, 2009, PO Ranallo was interviewed at the CCRB (Enc. 12A-B). PO Ranallo did not recall the incident. She stated that she was familiar with SGT Schwarz, PO Labate, and PO Nunez, and that she was also familiar with the incident location.

**NYPD Documents**

**SPRINTS**

- The SPRINT report for the incident indicates that, at 1:42 a.m. on the incident date, subsequent to § 87(2)(b) initial 911 call, 911 operator 1156 requested that a sergeant respond to the incident location and notify IAB upon arrival.
- The SPRINT report for the car alarm going off at § 87(2)(b) between West 204<sup>th</sup> Street and West 207<sup>th</sup> Street on the date of the incident shows that PO Ranallo and PO Duran remained in the close vicinity of § 87(2)(b) and § 87(2)(b) from 1:25 a.m. to 2:26 a.m.

Both reports are enclosed (Enc. 18A-C)

**34<sup>th</sup> Precinct Roll Call**

- The 34<sup>th</sup> Precinct Tour 3 Roll call for May 7, 2009, confirms that, at the time of the incident, PO Nunez and PO Labate were assigned to anti-crime with SGT Schwarz as their supervisor (Enc. 23A-R).

**34<sup>th</sup> Precinct Command Log**

- § 87(2)(b) arrest was entered into the command log at 2:05 a.m. His arrest time was listed as 2:01 a.m. and his physical condition was described as apparently normal. His arresting officer was PO Labate. § 87(2)(b) was charged with § 87(2)(b) and was transported to Central Booking at 5:55 a.m (Enc. 21A).

### **34<sup>th</sup> Precinct Holding Pen Roster**

- The Prisoner Holding Pen Roster confirms that § 87(2)(b) was held at the 34<sup>th</sup> Precinct from 2:05 a.m. to 5:55 a.m. on the incident date (Enc. 22A).

### **Disposition of Arrest for Incident**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Status of Civil Proceedings**

- As of February 8, 2010, § 87(2)(b) has not filed a Notice of Claim with the City of New York with regards to the incident.

### **Civilian's Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian's CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (Enc. 2A-F).

### **Subject Officers' CCRB History**

- PO Nunez has been a member of the service for nine years and there is one substantiated CCRB allegation against him. In CCRB case number 200504839, the allegation of a vehicle searched was substantiated and PO Nunez received instructions.
  - PO Labate has been a member of the service for five years and there are no substantiated CCRB allegations against him.
  - SGT Schwarz has been a member of the service for fourteen years and there are no substantiated CCRB allegations against him.
- Their histories are enclosed (Enc. 2A-F)

## **Conclusions and Recommendations**

### **Officer Identification**

- § 87(2)(b) alleged that PO Labate, SGT Schwarz, PO Nunez and a fourth unidentified officer stopped his car and removed the occupants from the vehicle. § 87(2)(g)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- § 87(2)(b) described the officer who directed profanity at him as a 40-year-old white male, 6'3'', 230 pounds with blonde hair, a slight pot belly, and a large head. § 87(2)(g)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- § 87(2)(b) described a Hispanic male, PO Nunez, removing him from the vehicle, who allegedly began choking him. § 87(2)(g) § 87(2)(b) then described PO3 as choking him. However, as already noted, that officer is unidentified. § 87(2)(g)  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] also described the officer fitting PO Nunez's pedigree

as threatening him with arrest after he made a general request for names and shield numbers. § 87(2)(g)

• § 87(2)(b) also described the officers using force against the other occupants of the vehicle, § 87(2)(b) and § 87(2)(b) but could not describe which officers were taking those actions. Neither of those civilians participated in the investigation. § 87(2)(g)

### **Allegations Not Pleaded**

While § 87(2)(b) alleged that he asked for names and shield numbers, based on his statement, he did not address his request to one officer in particular. § 87(2)(g)

§ 87(2)(g)

### **Allegation A – Abuse of Authority: SGT Daniel Schwarz authorized the stop of the car in which § 87(2)(b) was an occupant.**

SGT Schwarz stated that he authorized the stop of § 87(2)(b) vehicle because he observed an individual pass a suspicious-looking article of clothing into the car. However, the officers also indicated that the car was double-parked, and § 87(2)(b) confirmed that his car was illegally double-parked. § 87(2)(g)

### **Allegation B – Abuse of Authority: SGT Daniel Schwarz authorized the frisk of § 87(2)(b)**

§ 87(2)(b) § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) stated that while inside the vehicle, the officers ordered them outside one person at a time and subsequently frisked them. SGT Schwarz confirmed that all the civilians were frisked. § 87(2)(g)

PO Labate and SGT Schwarz both indicated that § 87(2)(b) handed off a t-shirt to the driver, § 87(2)(b). Both officers indicated that there was some “weight” to the shirt, and suspected that a gun may be wrapped inside. However, SGT Schwarz also said that the shirt looked to have contained a kilo of cocaine. For these reasons, SGT Schwarz believed the officers’ safety to be in jeopardy and therefore he authorized the frisks of the civilians in this case.

Additionally, the officers asserted that once they approached, the civilians became belligerent and began cursing at the officers. However, the 911 recording indicates § 87(2)(b) was acting in a calm manner while an officer was cursing at him. In addition, PO Nunez could not provide any testimony concerning this incident despite filling out a memo-book entry and stop-and-frisk reports.

According to the NYPD memo-book insert regarding street encounters officers may, during the course of a stop, frisk a subject if that officer suspects the subject is armed (PD 344-153, Enc). Essentially, an officer must entertain a reasonable suspicion that the suspect is armed and dangerous in order to justify a frisk. Barry Kamins writes in New York Search and Seizure that, “If innocuous behavior is found to have occurred in a high crime area, that fact alone will *not* provide the officer with reasonable suspicion that the defendant is committing a crime. In one case, the defendant was observed walking at 10pm on a spring evening on 120<sup>th</sup> Street in Harlem. He was wearing a beige three-quarter-length raincoat, which was ragged and old. In addition, his coat hung lower on one side. The droop was apparently caused by an ‘object of bulk’ in his pocket” (Kamins, 2.04[3], Enc 1A-B). In that case, the court found the defendant’s behavior to be innocuous and normal.

§ 87(2)(g)

**Allegation C – Abuse of Authority: SGT Daniel Schwarz searched § 87(2)(b)**

PO Labate confirmed § 87(2)(b) account that an officer searched him and that the search produced the jar of marijuana. In contrast, SGT Schwarz denied searching § 87(2)(b) but admitted to frisking him. Sgt. Schwartz stated that during the frisk of § 87(2)(b) the jar of marijuana fell from § 87(2)(b) person onto the ground where it shattered, revealing the contents as marijuana. § 87(2)(g)

**Allegation D – Abuse of Authority: SGT Daniel Schwarz supervised the use of obscenity by a subordinate officer.**

On the 911 recording, it is clear that an officer makes the following statements: “You’re assholes, right? You’re all fucking assholes, right? Shut the fuck up! Shut the fuck up! Let’s go. What? Who you calling? Shut the fuck up! Shut the fuck up!” Finally, at the conclusion of the recording, the same officer can be heard referring to his employment with the NYPD, saying—“That’s my job, motherfucker.” While the officer who made these comments was not identified, Patrol Guide procedure 203-11 states, “the patrol supervisor, if present, should direct and control all activity” (Enc. 1A-F). Additionally, according to Patrol Guide procedure 203-09, an officer must be courteous and respectful in his contact with members of the public (Enc. 1A-F).

SGT Schwarz maintained during his CCRB interview that no officer had used profanity, even after hearing this 911 recording played back to him. § 87(2)(g)

§ 87(2)(g)

**Allegation E – Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)**

As discussed above, § 87(2)(b) and § 87(2)(b) failed to cooperate with the investigation.

§ 87(2)(g)

**Allegation F – Force: PO Fabio Nunez used a chokehold against § 87(2)(b)**

**Allegation G – Force: An officer used a chokehold against § 87(2)(b)**

§ 87(2)(b) alleged that PO Nunez and a second officer used chokeholds against him. PO Labate corroborated that § 87(2)(b) was placed against the side of the vehicle. This was confirmed by the UF-250’s (“suspect against wall.”) While PO Labate claimed that § 87(2)(b) was not placed against the side

of the car with any force, the UF-250 for § 87(2)(b) indicated that physical force was used to “restrain, control, and remove” § 87(2)(b) from the vehicle.

§ 87(2)(b) indicated that PO Nunez discovered that he was on the phone with 911 and was the one who pushed him against the car, choking him. Another officer then approached and choked him.

§ 87(2)(g)

**Allegation H – Abuse of Authority: SGT Daniel Schwarz authorized the search of the car in which § 87(2)(b) was an occupant.**

Although SGT Schwarz denied that a car search was conducted, PO Labate confirmed that an officer had indeed conducted a car search. § 87(2)(g)

**Allegation I – Abuse of Authority: PO Fabio Nunez threatened to arrest § 87(2)(b)**

§ 87(2)(b) stated that PO Nunez threatened him with arrest after he requested names and shield numbers, stating, “My name is officer. Get back in the car and leave. If you guys stay here, we’ll come up with something to arrest you.”

Officer Nunez said he did not recall this incident, § 87(2)(g) However, the other two officers in this case denied that names and shield numbers were ever requested and § 87(2)(b) was interviewed a year after the incident and made no mention of a name and shield number request. § 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date